

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Facilitating the Provision of Spectrum-Based	)	WT Docket No. 02-381
Services to Rural Areas and Promoting	)	
Opportunities for Rural Telephone Companies	)	
To Provide Spectrum-Based Services	)	

**Comments of TCA, Inc.**

TCA, Inc. - Telcom Consulting Associates (TCA) hereby submits these comments in the above-captioned proceeding regarding the effectiveness of the Commission's current regulatory tools in facilitating the delivery of spectrum-based services to rural areas.

TCA is a management consulting firm providing financial, regulatory, management and marketing services for over fifty small, rural local exchange carriers (LECs) throughout the United States. TCA's clients include tribal-owned carriers and carriers providing wireless services in rural areas.

**I. The Commission should adopt one definition of "Rural Area".**

One definition of "rural area" within federal telecommunications policy is significant. In order to promote both regulatory consistency and parity, all telecommunications companies should be able to rely on one definition of "rural area," regardless of whether working with the Wireless Telecommunications Bureau, the Office of Plans and Policy or any Commissioner.

TCA respectfully submits that the definition of the term Rural Area has been debated by Congress and a definition has been adopted by the Commission. As the Notice of Inquiry (“NOI”) discusses, the Telecommunications Act of 1996 (the “Act”) precisely defines a “rural telephone company” as an entity meeting any of the following standards:

- a) provides common carrier service to any local exchange carrier study area that does not include either any incorporated place of 10,000 inhabitants or more, based on the most recently available population statistics of the Bureau of Census or any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
- b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
- c) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
- d) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.<sup>1</sup>

The Commission recognized and incorporated this definition of “rural telephone company” in its 1997 Order regarding Universal Service.<sup>2</sup>

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<sup>1</sup> 47 U.S.C. Section 153 (37).

<sup>2</sup> Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, FCC 97-157, 12 FCC Record 8776 (1997), ¶96.

In accepting the statutory definition of “rural telephone company,” the Commission also accepted the definition of “rural area.” As both Congress and the Commission believe and clearly state, the term Rural Area is defined as a local exchange service area “that does not include either any incorporated place of 10,000 inhabitants or more, based on the most recently available population statistics of the Bureau of Census or any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993.”<sup>3</sup>

Rural telephone companies, the subject of this proceeding, are extremely familiar with this definition, as is the Commission. This definition, being contained within the Act, has the blessing of Congress. It is a definition that, if adopted within this proceeding, would contribute greatly to regulatory certainty and parity.

**II. The Commission should be wary of relying on private industry when implementing Congressionally-mandated responsibilities.**

Congress, when it gave the Commission spectrum auction authority, had concerns that competitive bidding would bring about the very situation now faced in the wireless industry – the public resource of spectrum parceled out to only a few large carriers resulting in an inequitable distribution of wireless service.<sup>4</sup> To guard against this occurrence, Congress mandated that the Commission establish objectives “to protect the public interest in the use of the spectrum...”<sup>5</sup> Three of those objectives have relevance

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<sup>3</sup> 47 U.S.C. Section 153 (37).

<sup>4</sup> H.R. Report 103-111, 103<sup>rd</sup> Congress, 1<sup>st</sup> Session, pp. 254-255.

<sup>5</sup> 47 U.S.C. §309(j)(3).

in this proceeding. The Commission was to consider spectrum policy that would promote:

- (A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including *those residing in rural areas...*
- (B) economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, *rural telephone companies*, and businesses owned by members of minority groups and women;
- ...
- (D) *efficient* and intensive use of the electromagnetic spectrum...<sup>6</sup>

The Commission has attempted to meet the Congressional mandate by relying on private industry. Establishing bidding credits, designating various sizes of license areas, allowing for a secondary market in spectrum and specific performance requirements are ways cited in the NOI by which the Commission seeks to fulfill the Congressional mandate.<sup>7</sup> TCA respectfully submits, however, that the Commission has for too long relied on private industry to meet the specific and clear responsibility laid down by Congress.

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<sup>6</sup> 47 U.S.C. §309(j)(3) (A), (B) and (D).

<sup>7</sup> NOI, ¶3.

Many factors contribute to the current lack of wireless service in rural communities.

Chief among these factors are the generally large geographic license size, buildout requirements that allow licenseholders to offer services only to densely populated areas and an almost non-existent secondary market for the public resource of spectrum. These factors combine to force a current reality on most rural consumers – Unless you live next to a major transportation route, you cannot access wireless services from your community. This reality is also in force for rural carriers who serve these customers with wireline services.

These carriers, which continue to serve the less lucrative market of rural communities, desire to provide wireless services to their customers. However, rural carriers are blocked from obtaining needed spectrum by the same set of factors that block wireless service to rural customers.

Two of the factors cited by the Commission, bidding credits and license size, are exclusively limited to the auction process. The availability of bidding credits to rural telephone companies has been largely successful. As the NOI discusses, an overwhelming majority of past qualified bidders self-identifying as “rural telephone companies” were eligible to receive the small business credit.<sup>8</sup> However, not stated in the NOI, was the percentage of those qualified bidders winning spectrum at auction. The regulatory value of bidding credits is diminished when the auction process is seemingly skewed against small businesses.

License area size also clearly contributes to potential success of rural telephone companies at auction. Again, the NOI appears to claim success by citing the recently completed Auction No. 44 as an auction in which rural telephone companies successfully competed for spectrum.<sup>9</sup> While it is true that the majority of winning bidders in Auction No. 44 self-classified as “rural telephone company,” a closer examination of Auction No. 44 demonstrates the value of small area license sizes in that success.

The Commission assigned 25 percent of the Lower 700 MHz Band spectrum, the spectrum at auction in Auction No. 44, over the MSA/RSA license areas.<sup>10</sup> In doing so, the Commission stated that this assignment “balances the playing field such that small and rural providers will have an opportunity to participate in the auction.”<sup>11</sup> Further, Auction No. 44 was statutorily limited to only the C and D Blocks of the band,<sup>12</sup> effectively limiting the bidders to almost solely rural telephone companies. While Auction No. 44 was very successful for rural telephone companies and the communities they serve, the success should be attributed to the small license areas.

Both of these factors contributing to spectrum availability to rural telephone companies, bidding credits and small area license size, are exclusive to the auction process, a process that may be ending. As the NOI notes, the Commission has completed 29

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<sup>8</sup> NOI, ¶6.

<sup>9</sup> *Ibid.*

<sup>10</sup> In the Matter of Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, GN Docket No. 01-74, FCC 01-364, ¶95 (“Lower 700 Order”). The C Block of the band at auction was limited to MSA/RSA license sizes.

<sup>11</sup> Lower 700 Order, ¶96.

<sup>12</sup> Auction Reform Act of 2002, Public Law 107-195, Section 3.

relevant auctions since 1994.<sup>13</sup> If, as TCA hopes, that the Commission determines in this proceeding that rural areas are underserved regarding wireless services, then reliance on these two tools may be misplaced.

Outside of the auction process, rural carriers may also attempt to access wireless spectrum through the secondary market. Through either partitioning or disaggregating spectrum, in theory, rural carriers may access needed spectrum. However, as the Commission is aware, in reality, most rural carriers are disappointed in these efforts.

Efforts made by rural carriers to obtain spectrum in the secondary market are largely met with disinterest and rejection. A review of FCC records finds few partition agreements or license transfers to the benefit of rural telephone companies. The Commission itself provides weight to this conclusion in the NOI. It cites an analysis of 500 partitioning or disaggregating applications before the Commission between April 1997 and September 2002. Of the 500 sample, 13.5 percent, or only 67, of the assignees identify as a rural carrier.<sup>14</sup>

TCA's clients have experienced a similar lack of success in its efforts to find spectrum for its clients. In one example, a rural carrier attempted for 3 years to find a licenseholder in rural Nebraska willing to partition or disaggregate spectrum. Even though the majority of area covered by the licenses was unserved, no licenseholder was willing to give up any amount of spectrum. Most of the licenseholders completely

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<sup>13</sup> NOI, ¶6.

<sup>14</sup> NOI, ¶8.

ignored attempts for even initial discussion. Only in the last six months, after TCA's client acquired spectrum from another source, has one licenseholder finally returned a phone call.

The Commission needs to carefully consider additional regulations in the secondary market. The Commission should, at a minimum, require the current licenseholder to partition or disaggregate spectrum, if, after a period of time, areas covered by a license are unserved or underserved. The current rural telephone company serving the area should be given the right of first refusal.

### **III. Conclusion.**

TCA strongly supports any opportunity for rural carriers to continue their record of excellent customer service by offering wireless service options. Such services allow rural carriers opportunity to participate in this economically significant industry, which in turn promotes economic development of rural communities. Any additional opportunities would help to fulfill the promise made by Congress to rural areas, including the carriers that serve them, within the Act.

Respectfully submitted,  
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